

SUPREME COURT
OF
BRITISH COLUMBIA

SEAL

VICTORIA
REGISTRY

MAY 06 2013



BETWEEN:

No.

10 1632

Victoria Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

DR. WILLIAM WARBURTON

Plaintiff

AND:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE
OF BRITISH COLUMBIA and
DR. MARGARET MacDIARMID

Defendant

NOTICE OF CIVIL CLAIM

This action has been started by the plaintiff for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

- (a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

Time for response to civil claim

A response to civil claim must be filed and served on the plaintiff(s),

- (a) if you reside anywhere in Canada, within 21 days after the date on which a copy of the filed notice of civil claim was served on you,

- (b) if you reside in the United States of America, within 35 days after the date on which a copy of the filed notice of civil claim was served on you,
- (c) if you reside elsewhere, within 49 days after the date on which a copy of the filed notice of civil claim was served on you, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

CLAIM OF THE PLAINTIFF

Part 1: STATEMENT OF FACTS

1. The Plaintiff, Dr. William Warburton ("Dr. Warburton") of 1370 Oliver Street, Victoria BC is a labour and health economist.
2. The Defendant, Her Majesty The Queen In Right of the Province of British Columbia (the "Province") formerly had a contractual relationship with Dr. Warburton and is represented by the Ministry of Health.
3. The Defendant, Dr. Margaret MacDiarmid ("Minister") is the Minister of Health for the Province.
4. In August 2010, the Province and Dr. Warburton executed a General Services Agreement in the amount of \$1.00, providing for Dr. Warburton ("the Contractor") to "*conduct complex data analyses at the Ministry of Health*" for the Primary Health Care and Specialists Services Branch, part of the Medical Services and Health Human Resources Division, in order to support the work of the General Practice Services Committee, a joint committee of the Ministry of Health and the British Columbia Medical Association. It explicitly authorized work on the impact of atypical anti-psychotic medications on patient health outcomes, and provided for other work to be performed on instructions from the Ministry. The initial agreement ended March 31, 2010. Additional agreements were signed in 2011 and 2012, with the last agreement ending March 31, 2013 (together, the "Contracts", the last agreement, the "Contract"). The Contract, which added work on stroke outcomes, stated, "There is an option to extend this contract for one year past the end date."
5. At the time of entering the Contract Dr. Warburton had a reasonable expectation that the association would continue for one or more additional years.
6. The Defendants were aware at all material times that Dr. Warburton required the Contract in order to fulfill his other related research obligations which provided him with income and professional enhancement.

7. The Contract contained an express term that the Province agreed that Dr Warburton owns all right, title and interest in the material produced under the Contracts and the Intellectual Property arising from the services provided under the Contracts, and that Dr Warburton would not be restricted from presenting publications at symposia, national or regional professional meetings, or from publishing in journals or other publications of accounts of the work pertaining to the Contracts.
8. Dr. Warburton is 59 years old and holds a Bachelor's with Honours degree, two Master's degrees, and a Doctor of Philosophy degree, all in Economics, from (respectively) Queen's University, the University of Western Ontario, the London School of Economics (UK), and the University of London (UK). He was formerly Executive Director of the Child and Youth Development Trajectory Research Unit in the College of Interdisciplinary Studies at the University of B.C., and prior to that was the Director of the Economic Analysis Branch in the B.C. Ministry of Human Resources, where he pioneered research using linked administrative data on health, education, welfare, child protection and incarceration. Dr. Warburton is recognized as an international expert in analysis of administrative data for research purposes. He has been Principal Investigator or a Co-Investigator on competitively-awarded research grants from the Canadian Institutes for Health Research, and other granting agencies. He has numerous publications in peer-reviewed scientific journals.
9. At all material times, Dr. Warburton was informed by staff of the Primary Health Care and Specialists Branch that his work was highly valued.
10. Dr. Warburton's research related to the Contracts included investigation of harmful side-effects, including mortality, and risk assessment of drugs purchased by the Province through its programs, and had the potential of disrupting financially significant payments to large pharmaceutical companies, many of whom were major contributors to the Liberal Party who formed the government in the Province. At all material times, the Defendants were aware that Dr. Warburton was investigating very profitable drugs, he had found evidence of strong harmful side effects, and that the drugs were not primarily prescribed for approved uses.
11. Dr. Warburton's investigations included an atypical antipsychotic Aripiprazole (brand name – Abilify) manufactured by Bristol Myers Squibb, Quetiapine (brand name – Seroquel) manufactured by AstraZeneca Canada Inc., Olanzapine (brand name – Zyprexa) manufactured by Eli Lilly Canada Inc., Risperidone (brand name – Risperdal) manufactured by Janssen Inc., Ziprasidone (brand name – Zeldox) manufactured by Pfizer Canada Inc., Paliperidone (brand name – Invega) manufactured by Janssen Inc. and Clorzapine (brand name – Clozaril) manufactured by Novartis Pharmaceuticals Canada Inc.

12. The Province had commenced programs and financing to attract major drug companies to British Columbia. Also, the Liberal Party was receiving significant contributions from these drug companies, and the Province was eliminating drug safety programs that could cause restrictions on sales of the products of these drug companies, which sales overall reached the billions of dollars, and these actions including ending drug analysis programs such as that of Dr. Warburton and of the Therapeutics Initiative at the University of British Columbia.
13. The Province's acts against Dr Warburton are part of a bad faith program by the Defendants to end the investigation of harmful effects of drugs which risk leading to diminishing payments to their political contributors, and constitute misfeasance in public office as the Defendants were aware that their deliberate acts against Dr. Warburton were illegal and would likely harm him.
14. By letter of June 11, 2012, the Province through Assistant Deputy Minister Nichola Manning ("Manning") notified Dr. Warburton that his access to ministry data was revoked. The Defendants were aware this would negatively impact Dr. Warburton's work.
15. The Defendants also revoked data access to the University of Victoria Alzheimer's Drug Therapy Initiative. Dr. Warburton was retained by the University of Victoria to perform sophisticated data analysis for the Alzheimer's Drug Therapy Initiative, which employment was terminated when the Province revoked access, causing the loss to Dr. Warburton of over \$100,000.00. The Province at all times was aware that revocation of data access would result in harm to Dr. Warburton and intended such result.
16. On July 17, 2012, the Province through Manning notified Dr. Warburton by letter that the Contract was terminated under clause 11.2 which requires default and stated it was for Dr. Warburton's failure to perform certain unspecified obligations and for improper access to provincial data. No specifics were given. The Defendants knew or ought to have known these statements were false and knew these acts would harm the Plaintiff.
17. Although Dr. Warburton was asked to keep the termination confidential, the Defendants on or about July 18, 2012 through the Executive Directors of Drug Intelligence Branch and the Policy, Outcomes, Evaluation and Research Branch in the Pharmaceutical Services Division, the Executive Director of the Primary Health Care and Specialists Services Branch and the Assistant Deputy Minister in the Medical Services and Health Human Resources Division announced and notified about 150 staff members of the termination of Dr. Warburton's Contract, and of suspensions of other employees.

18. By letter of August 3, 2012, the Province wrote that a preliminary review of an anonymous complaint revealed information indicating Dr. Warburton had obtained or attempted to obtain improper access to certain provincial data. The Defendants knew or ought to have known this was false.
19. The Province knew or ought to have known that its investigation was flawed, superficial, politically motivated and conducted by novice, unqualified, inexperienced investigators.
20. Despite requests, the Province has not disclosed the basis of its false statements concerning Dr. Warburton. Nor has it provided Dr. Warburton information and opportunity to reply and refute them.
21. On September 6, 2012, the Vancouver Sun published an article titled "*BC health ministry suspends workers over privacy breach*" as a result of the Defendants, and which the Defendants knew or ought to have known would be published. The Defendants are responsible for the defamations in this article.
22. Also on September 6, 2012, the Minister held a press conference and published a press release. This press release mentioned the termination of contracts and suspension of data access, and that the RCMP and other government agencies had been contacted and were investigating. The Defendants' publications included allegations of conflict of interest, inappropriate contract management and data access with external drug researchers, and that the Offices of the Comptroller General, Auditor General and Information and Privacy Commissioner were provided with interim reports of the Defendants' investigation.
23. The Defendants' publications of September 6, 2012 were of and regarding Dr. Warburton and so understood by the intended readers. The press conference and press release publications were false and were defamatory of Dr. Warburton. The defamatory sting of these publications were that Dr. Warburton was guilty of improper and criminal conduct, breaching the contracting rules of the government, breaching the financial administration rules of the government and breaching the privacy rules of the government.
24. The Defendants' publications of September 6, 2012 were broadcast in part on local, provincial and national newscasts quoting the Minister.
25. On September 10, 2012 the Minister stated in an interview that there was sufficient evidence to fire the employees, and implicitly to terminate Dr. Warburton. In addition, the Minister stated there was evidence of inappropriate conduct in the areas of drug research. She further stated: "*But, when a small number of people work together to work around the law, um, I can say that we absolutely won't tolerate it but I can also say that it's not*

possible to stop people from doing that. Um, when people decide to work together and to go around the legislation, it's not a question of the legislation being a problem. ... So what we have to do going forward is to make sure we're doing that with the appropriate protection in place and make sure we don't have these issues of inappropriate conduct and, and uh going around the law that we have in place." These statements were false and defamatory of Dr. Warburton.

26. On October 25, 2012, the Defendants caused to be published in the Victoria Times-Colonist statements that the Minister found the breaches of public trust to be *"deeply concerning"*. This statement was understood and intended to be understood to be of and concerning Dr. Warburton and were false and defamatory of him.
27. On October 31, 2012, the Defendants through Assistant Deputy Minister Lindsay Kislock wrote to Dr. Warburton demanding return of ministry data and stating he is not authorized to have access to Ministry owned data either then or in the future. The Defendants knew at all material times that Dr Warburton had no Ministry owned data except such as the Contracts permit him and to which he has full rights. The Defendants knew or ought to have known that a lifetime ban on access to data would severely damage Dr. Warburton's professional reputation and ability to earn a living.
28. On January 14, 2013, the Defendants added a page to the Ministry website titled "Health Data Investigation Update", issued a notification letter to 38,486 individuals and published a press release stating: *"Health Minister Margaret MacDiarmid provided an update today on the ministry's data investigation that has confirmed a number of instances where personal health data was accessed for research purposes without authorization."* and *"The ministry has been in communication with the parties involved, or their legal representatives, as applicable, concerning the return of ministry data."* The notification letter stated that the individual's Ministry and Canadian Community Health Survey ("CCHS") data had been "shared with a researcher outside the Ministry for research purposes". The web page stated *"It is now clear that, contrary to established protocols, the ministry employee shared this information to be used in research outside the Ministry of Health."* These statements were understood and intended to be understood to be of and regarding Dr. Warburton and were false and defamatory of him.
29. On January 15, 2013, the Minister provided an interview on CFX 1070 radio and stated: *"Once that health data has left the Ministry on a USB stick that is not encrypted and... you know can... it's out there and someone could copy it, you are quite right. And I don't know whether that has happened" and in answer to a question as to whether anything criminal has happened, the Minister stated: "I don't know! And you know with respect to those kinds of things, information is being provided to the RCMP and I don't know what will*

happen with that. And it's up to the RCMP to say. But it is certainly true that early on in the investigation, the RCMP were contacted and information has been provided to them; as we've done our investigation the information has been provided to them." and "...the data of the health information is considered to be a Ministry asset. And when something wrong is done with that, it's standard process for the government to alert the RCMP and that's exactly what happened." These statements, and the balance of the entire broadcast interview, were understood and intended to be understood to be of and regarding Dr. Warburton and were false and defamatory of him.

30. The Defendants' above publications of and concerning Dr. Warburton were made falsely and maliciously, and with knowledge of their untruth or recklessly with disregard as to whether they were true or not.
31. As a result of the Ministry's unlawful termination of his Contracts and access to data, and the Defendants' defamations of him, Dr Warburton has suffered damages.

Part. 2: RELIEF SOUGHT

1. Damages for breach of contract, and unlawful interference with contract, including the resultant inability of Dr. Warburton to fulfill related obligations on other contracts;
2. Damages for defamation;
3. Aggravated damages;
4. Punitive damages;
5. Special costs;
6. Interest pursuant to the *Court Order Interest Act*;

Part. 3: LEGAL BASIS

1. The Defendants terminated Dr. Warburton's contract for cause, and they knew or should have known that they had no cause and were doing so in bad faith.
2. The Defendants knew that the termination of Dr. Warburton's contract would result in him being unable to fulfill his obligations in other contracts, and as a result he would suffer losses, including losses of opportunities and ability to enhance his professional reputation, and the Defendants contemplated and intended such result.

3. The Defendants defamed Dr. Warburton, and they knew or should have known their publications were false, or were reckless as to whether they were true or not, and knew or ought to have known they would harm Dr. Warburton.
4. The Defendants' conduct and breaches were extreme, causing Dr. Warburton to have aggravated emotional and financial damages.
5. The Defendants' conduct was so outrageous, high-handed and in disregard of Dr. Warburton's rights and reputation that an award of punitive damages is appropriate.

Plaintiff's address for service:

Peter I. Waldmann
Barrister & Solicitor
Peter I. Waldmann Law Corporation
109 – 1633 Hillside Avenue
Victoria BC V8T 2C4

Fax number for service (if any)

(416) 921-3183

E-mail address for service (if any)

peter@peteriwaldmann.com

Place of trial:

850 Burdett Avenue
Victoria, BC V8W 1B4

Dated: May 6, 2013


Peter I. Waldmann
Lawyer for the Plaintiff

Rule 7-1(1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
 - (a) prepare a list of documents in Form 22 that lists
 - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at the trial to prove or disprove a material fact, and
 - (ii) all other documents to which the party intends to refer at trial, and
 - (b) serve the list on all parties of record.

PART 1: CONCISE SUMMARY OF NATURE OF CLAIM

Claim for breach of contract, interference with contract, and defamation

PART 2: THIS CLAIM ARISES FROM THE FOLLOWING

A dispute concerning: contracts and defamatory publications

PART 3: THIS CLAIM INVOLVES:

None of the listed matters.

PART 4: ENACTMENTS BEING RELIED ON:

Libel and Slander Act, R.S.B.C. 1996, c. 263

Court File No.
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Defendants

NOTICE OF CIVIL CLAIM

**Peter I. Waldmann
Barrister & Solicitor
183 Augusta Avenue
Toronto Ontario M5T 2L4**

**Phone: (416) 921-3185
Fax: (416) 921-3183
Email: peter@peteriwaldmann.com**